

JOHN C. KLOOSTERMAN, Bar No. 182625
JORJA E. JACKSON, Bar No. 226707
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108-2693
Telephone: 415.433.1940
Facsimile: 415.399.8490
E-mail: jkloosterman@littler.com
jjackson@littler.com

**Attorneys for Defendant
NOVELLUS SYSTEMS, INC.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v

NOVELLUS SYSTEMS, INC.

Defendant.

Case No. C07-4787 RS

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO DISMISS [FRCP 12
(b)(6)] OR, ALTERNATIVELY, FOR A
MORE DEFINITE STATEMENT [FRCP
12(e)]; MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 12, 2007

Time: 9:30 a.m.

Courtroom: 4

Judge: Honorable Richard Seeborg

NOTICE OF MOTION AND MOTION TO DISMISS

TO: PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND ITS
ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that, on December 12, 2007, at 9:30 a.m. in Courtroom 4 of this Court, located at 280 South First Street, San Jose, California, Defendant Novellus Systems, Inc. ("Novellus") will move, and hereby does move, for an order dismissing with prejudice Plaintiff Equal Employment Opportunity Commission's ("EEOC") complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure 12(b)(6); alternatively, Novellus will move, and hereby does move, for an order requiring Plaintiff to provide a more definite statement.

**DEF'S NOT OF MOT/MOTION TO DISMISS
OR FOR A MORE DEFINITE STATEMENT**

No. C-07-4787 RS

The instant motion is based on this notice of motion and motion to dismiss; the memorandum of points and authorities in support thereof; all other papers submitted in connection with the motion; argument of counsel; and the complete files and records of this action.

Dated: November 13, 2007

/s/
JOHN C. KLOOSTERMAN
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
NOVELLUS SYSTEMS, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff EEOC has pled no facts in its Complaint. This is not an exaggeration – the Complaint alleges ultimate legal conclusions (that, for example, Novellus allegedly subjected an individual named Michael Cooke to harassment) but fails to state any facts that support those conclusions. The Complaint does not even allege whether Mr. Cooke was a Novellus employee. By this motion, Novellus merely asks that this Court dismiss the EEOC's Complaint or order it to plead appropriate facts so Novellus can frame a responsive pleading.

II. STATEMENT OF FACTS

Beyond asserting that Novellus is an employer and that the EEOC is an agency, the EEOC has pled no facts in its Complaint, which is why Novellus brings this motion. The Complaint merely alleges that “Michael Cooke filed a charge of discrimination with the EEOC.” Complaint ¶6. It also alleges that “[s]ince at least January 2004, Defendant has engaged in unlawful employment practices at its facility in San Jose, California,” and that “[t]hese practices including [sic] subjecting Mr. Cooke to racial harassment and to an offensive, abusive, intimidating, and hostile work environment on account of his race, African American.” Complaint ¶6. Finally, the Complaint alleges that “the practices also include retaliating against and discharging (layoff) Mr. Cooke for complaining about the harassment.” *Id.* That’s it. The Complaint provides no facts beyond these conclusory statements of the EEOC’s presumed legal theory. The EEOC provided more detail in the press release it issued the same day as the Complaint than it provided in its Complaint. See Novellus’ Request for Judicial Notice, Exh. A.

III. LEGAL STANDARD

A motion to dismiss pursuant to Federal Rules of Civil Procedure (“FRCP”) 12(b)(6) tests the legal sufficiency of a claim stated in the complaint. In ruling on such a motion, the court must decide whether the facts alleged, if true, would entitle the Plaintiff to some form of legal remedy. Rule 8(a) allows for “a short and plain statement of the claim showing that the pleader is entitled to relief.” FRCP 8(a). Nevertheless, a Rule 12(b)(6) motion should be granted where there is an “absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica*

1 *Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). For example, a complaint or cause of action is
 2 subject to dismissal if it lacks allegations regarding an element necessary to obtain relief. *Fleming v.*
 3 *Lind-Waldock & Co.*, 922 F.2d 20, 24 (1st Cir. 1990). Moreover, while the factual allegations in a
 4 complaint should be accepted as true for the purpose of a Rule 12(b)(6) motion, conclusory legal
 5 allegations need not be accepted as true. *Western Mining Council v. Watt*, 643 F.2d 618, 624-625
 6 (9th Cir.1981).

7 **IV. THE EEOC'S COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO
 8 STATE ANY COGNIZABLE CLAIM AGAINST NOVELLUS**

9 The Complaint does nothing more than allege that Novellus harassed Mr. Cooke,
 10 subjected him to a hostile work environment and retaliated against him. But the Complaint includes
 11 absolutely no facts that possibly could lead anyone to these conclusions. “[A] simple declaration
 12 that defendant’s conduct violated the ultimate legal standard at issue . . . does not suffice” to plead a
 13 claim. *Creal v. City of Fairfield*, 2006 WL 2684359 at *2 (E.D. Cal. Sept. 9, 2006) citing *Gregory v.*
 14 *Daly*, 243 F.3d 687, 692 (2d Cir. 2001). See also, *Simpson v. Welch*, 900 F.2d 33, 35 (4th Cir. 1990)
 15 (“conclusory allegations of discrimination and harassment do not state a claim upon which relief can
 16 be granted”). Here, the EEOC has done nothing more than allege conclusory violations of the
 17 ultimate legal standard; accordingly, it has not pled a valid claim. It is impossible to discern under
 18 the above-discussed legal standard whether the Complaint states a cognizable claim because there
 19 are no facts for this Court to accept as true. If the EEOC is able to provide factual detail in a press
 20 release, it should certainly do so in its Complaint.

21 **V. ALTERNATIVELY, NOVELLUS IS ENTITLED TO A MORE DEFINITE
 22 STATEMENT**

23 Rule 12(e) allows a party to move for a more definite statement if the Complaint “is
 24 so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.”
 25 FRCP 12(e). The only requirement of the motion is that it “shall point out the defects complained of
 26 and the details desired.” *Id.* The court has the discretion to “require such detail as may be necessary
 27 in the particular case.” *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996). The standard for
 28 granting a motion for a more definite statement is:

DEF'S NOT OF MOT/MOTION TO DISMISS
 OR FOR A MORE DEFINITE STATEMENT

1 where the allegations of a complaint are not sufficiently specific to
 2 enable a defendant to determine the propriety of interposing in his
 3 answer a waivable defense, [citations], or where, in the absence of
 4 certain information peculiarly within the knowledge of the plaintiff,
 5 the defendant cannot, in good faith, answer the complaint with a
 6 general denial, [citation].

7 *Clark v. McDonald's Corp.*, 213 F.R.D. 198, 233 (D.N.J. 2003). Here, Novellus more than meets
 8 the standard.

9 The EEOC's Complaint pleads absolutely no facts. Accordingly, it is impossible for
 10 Novellus to frame a responsive pleading because Novellus has no idea of the factual basis for the
 11 EEOC's claims. Novellus requests that the EEOC be ordered to plead its claim in enough detail for
 12 Novellus to be able to respond to it.

13 VI. CONCLUSION

14 For the reasons discussed above, Novellus asks that this Court dismiss the Complaint
 15 or, alternatively, order the EEOC to plead facts sufficient to enable Novellus to frame a responsive
 16 pleading.

17 Dated: November 13, 2007

18 /s/
 19 JOHN C. KLOOSTERMAN
 20 LITTLER MENDELSON
 21 A Professional Corporation
 22 Attorneys for Defendant
 23 NOVELLUS SYSTEMS, INC.
 24

25 Firmwide:83576778.1 054830.1001
 26
 27
 28

DEF'S NOT OF MOT/MOTION TO DISMISS
 OR FOR A MORE DEFINITE STATEMENT